



## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Part 360**

#### **RIN 3064-AD59**

### **Resolution Plans Required for Insured Depository Institutions with \$50 Billion or More in Total Assets**

**AGENCY:** Federal Deposit Insurance Corporation ("FDIC").

**ACTION:** Final rule.

**SUMMARY:** The FDIC is adopting this final rule ("Rule") requiring an insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution of such institution in the event of its failure ("Resolution Plan"). The Rule establishes the requirements for submission and content of a Resolution Plan, as well as procedures for review by the FDIC. The Rule requires a covered insured depository institution ("CIDI") to submit a Resolution Plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors. The Rule is intended to address the continuing exposure of the banking industry to the risks of

insolvency of large and complex insured depository institutions, an exposure that can be mitigated with proper resolution planning.

The Interim Final Rule, which preceded this Rule, was effective January 1, 2012<sup>1</sup>, and remains in effect until superseded by this Rule on April 1, 2012.

**DATES:** The Rule is effective April 1, 2012.

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The FDIC is charged by Congress with the responsibility for insuring the deposits of banks and thrifts in the United States, and with serving as receiver of such institutions if those banks and thrifts should fail. As of September 30, 2011, the FDIC insured approximately \$6.78 trillion in deposits in more than 7,445 depository institutions. To evaluate potential loss severity and to enable it to perform its resolution functions most efficiently, the FDIC is requiring each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a Resolution Plan. Currently, 37 insured depository institutions are covered by the Rule.

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<sup>1</sup> 76 FR 58379 (September 21, 2011).

Those institutions held approximately \$4.14 trillion in insured deposits or nearly 61 percent of all insured deposits as of September 30, 2011.

In implementing the deposit insurance program and in efficiently and effectively resolving failed depository institutions, the FDIC strengthens the stability of, and helps maintain public confidence in, the banking system in the United States. In its efforts to achieve this objective and to implement its insurance and resolution functions, the FDIC requires a comprehensive understanding of the organization, operation and business practices of insured depository institutions in the United States, with particular attention to the nation's largest and most complex insured depository institutions.

To ensure that the FDIC can effectively carry out these core responsibilities, the Rule requires a limited number of the largest insured depository institutions to provide the FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures. The Rule requires these institutions to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved in an orderly and timely manner in the event of receivership. The Rule also makes a critically important contribution to the FDIC's implementation of its statutory receivership responsibilities by providing the FDIC as receiver with the information it needs to make orderly and cost-effective resolutions much more feasible. Based upon its experience resolving failed insured depository institutions (and in particular, large and complex insured depository institutions), the FDIC has concluded that Resolution Plans for large and complex insured depository institutions are essential for their orderly and least-cost resolution and the development of such plans should begin promptly.

Since the recent financial crisis began in late 2008, financial authorities throughout the world have recognized and agreed that advance planning for the resolution of large, complex financial institutions is critical to minimizing the disruption that a failure of such an institution may have as well as the costs of its resolution. At the 2009 Pittsburgh Summit, and in response to the crisis, the G20 Leaders called on the Financial Stability Board (“FSB”) to propose possible measures to address the “too big to fail” and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of “internationally consistent firm-specific contingency and resolution plans.” The FSB continues its efforts to develop the international standards for contingency and resolution plans and to evaluate how to improve the capacity of national authorities to implement orderly resolutions of large and interconnected financial firms and periodically reports its progress to the G20 Leaders.<sup>2</sup>

The FSB’s program has built on work undertaken by the Basel Committee on Banking Supervision’s Cross-border Bank Resolution Group, co-chaired by the FDIC, since 2007. In its final Report and Recommendations of the Crossborder Bank Resolution Group, issued on March 18, 2010, the Basel Committee emphasized the importance of preplanning and the development of practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. In its review of the financial crisis, the Report found that one of the main lessons was that the complexity and interconnectedness of large financial conglomerates made crisis management and resolutions more difficult and unpredictable.

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<sup>2</sup> See “Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability” Reports of the Financial Stability Board to G20 Finance Ministers and Central Bank Governors dated February 15, 2011, and April 10, 2011.

Similarly, the FSB's Principles for Cross-Border Cooperation on Crisis Management commit national authorities to ensure that firms develop adequate contingency plans, including information regarding group structure, and legal, financial and operational intra-group dependencies; the interlinkages between the firms and financial system (e.g., in markets and infrastructures) in each jurisdiction in which they operate; and potential impediments to a coordinated solution stemming from the legal frameworks and bank resolution procedures of the countries in which the firm operates. The FSB Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis. The FSB recommendations strongly encourage firms to maintain contingency plans and procedures for use in a resolution situation (e.g., factsheets that could easily be used by insolvency practitioners), and to review them regularly to ensure that they remain accurate and adequate. On July 19, 2011, the FSB issued a public consultation on proposed measures to address systemic risk and moral hazard posed by systemically important financial institutions, which includes proposed measures for improved resolution planning by firms and authorities.<sup>3</sup> The Rule supports and complements these international efforts.

In addition, Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd- Frank Act"), 12 U.S.C. 5365(d), adopted July 21, 2010, mandates that each covered company periodically submit to the Board of Governors of the Federal Reserve System ("FRB"), the Financial Stability Oversight Council, and the FDIC the plan of such

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<sup>3</sup> See Financial Stability Board, "Consultative Document: Effective Resolution of Systemically Important Financial Institutions— Recommendations and Timelines," 17 (July 19, 2011), available at [http://www.financialstabilityboard.org/publications/r\\_110719.pdf](http://www.financialstabilityboard.org/publications/r_110719.pdf) ("An adequate, credible [recovery and resolution plan] should be required for any firm that is assessed by its home authority to have a potential impact on financial stability.") Annex 5 of the Consultative Document sets out a comprehensive proposed framework and content for such plans.

company for rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure (“DFA Resolution Plan”). This requirement applies to each nonbank financial company subjected to supervision by the Federal Reserve Board under Title I of the Dodd-Frank Act and each bank holding company with assets of \$50 billion or more, including foreign bank holding companies with U.S. financial operations.

The Rule is intended to complement the resolution plan requirements of the Dodd-Frank Act. The Rule requires each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a contingent plan for the resolution by the FDIC, as receiver, of such institution under the Federal Deposit Insurance Act (“FDI Act”) in the event of the institution’s failure. Currently, with the exception of three thrifts covered by the Rule, holding companies of each insured depository institution covered by the Rule are expected to file a DFA Resolution Plan. While a DFA Resolution Plan will describe the plan to resolve each parent holding company under the Bankruptcy Code, the Rule is focused on planning the resolution of the subsidiary insured depository institution, a resolution that will not be conducted under the Bankruptcy Code, but rather will be conducted under the receivership and liquidation provisions of the FDI Act.<sup>4</sup> The Rule sets forth the elements that are expected to be included in an insured depository institution’s Resolution Plan. The requirements for DFA Resolution Plans are provided in FRB and FDIC regulations relating thereto (“Section 165(d) rule”).<sup>5</sup>

The FDI Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the Rule. The FDIC’s roles as insurer and receiver require a distinct focus on potential loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the Deposit Insurance Fund and the ability of the

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<sup>4</sup> Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

<sup>5</sup> See FRB and FDIC Final Rule: Resolution Plans Required, 76 Fed. Reg. 67323 (November 1, 2011).

FDIC to conduct an orderly resolution. The authority to issue the Rule is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. 1819(a) Tenth, which authorizes the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or enforcing. The FDIC also has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act. 12 U.S.C. 1821(d)(1). Collection of the information required by the Rule is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the insured depository institution, including special examinations, 12 U.S.C. 1820(b)(3).

## **II. Interim Final Rule: Summary of Comments**

The FDIC originally proposed the resolution plan rule through a Notice of Proposed Rulemaking ("NPR") published in the *Federal Register* on May 17, 2010.<sup>6</sup> The NPR solicited public comment on all aspects of the NPR. The comment period ended on July 16, 2010, and eight comments were received. On September 21, 2011, the FDIC caused to be published in the *Federal Register* an Interim Final Rule (the "IFR").<sup>7</sup> The FDIC invited public comment on all aspects of the IFR and posed specific questions to the public regarding the scope of coverage, definitions of terms used in the IFR, strategic analysis, governance, informational elements and process. The comment period ended on November 21, 2011.

The FDIC received seven comment letters from individuals and banking organizations, as well as industry and trade groups representing the banking, insurance and financial services industry. Six of these comments specifically address provisions of the IFR. The comment letters generally expressed support for the broader goals of the IFR to require CIDs to provide the

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<sup>6</sup> 75 FR 27464, entitled "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Depository Institutions" (the "Proposed Rule").

<sup>7</sup> 76 FR 58379.

FDIC with essential information concerning their structure, operations, business practices, financial responsibilities and risk exposures, and to develop and submit detailed plans demonstrating how such insured depository institutions could be resolved under the FDI Act in an orderly and timely manner in the event of receivership. Some comment letters expressed concern that the IFR did not conform closely enough with the Section 165(d) rule, and others suggested that the Rule more specifically describe certain information that a CIDI must provide. By and large, the comments received fit within several of the categories of questions posed by the FDIC to the public in the IFR. One comment addressed the FDIC's burden estimate. These comments are summarized below.

#### *Scope*

The IFR requires each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. The \$50 billion in asset threshold was an increase from the \$10 billion in asset threshold proposed in the NPR although the NPR also required the CIDI to be owned by a holding company with \$100 billion or more in assets. One commenter agreed that only insured depository institutions with \$50 billion or more in assets should be subject to the Rule while those insured depository institutions with less than \$50 billion in assets should not be because their holding company structures and affiliate relationships are simple enough that they would not impede resolution under the FDI Act.

Another commenter advocated a coverage threshold using the aggregate assets of all consolidating and non-consolidating entities in the holding company group in order to mitigate the risk that assets are allocated among smaller entities to avoid being subject to the Rule. This



commenter suggested that an insured depository institution should be covered if the group's aggregate assets exceed \$50 billion.

One commenter was critical of the inclusion of savings association subsidiaries of savings and loan holding companies because savings associations typically focus on consumer and retail lending rather than commercial banking and do not present the complexity and the kind of threat to the deposit insurance fund or financial system that the Rule attempts to address. This commenter suggests that the rule should be imposed only on savings associations in financial distress, if other factors present a threat to the deposit insurance fund or the economy, or if the parent company has been designated as a systemically important financial institution by the Financial Stability Oversight Council; or, alternatively, only if the savings association is over \$50 billion and receives a CAMELS rating of 3 or worse or its parent receives an equivalent low rating. Additionally, this commenter suggests that the FDIC modify the Rule in a manner that would base a subsidiary insured depository institution's duty to file a Resolution Plan upon the requirement that the subsidiary's parent financial company file a DFA Resolution Plan.

### *Strategic Analysis*

With respect to strategic analysis, one commenter suggested that the FDIC consider a recapitalization of a CIDI as an alternative to traditional resolution methods, believing that such a strategy would be more effective during financial panic than would be a liquidation of assets or sale to a third party pursuant to a traditional purchase and assumption agreement. The same commenter recommended eliminating the requirement that the CIDI demonstrate the resolution strategy as "least-costly" because only the FDIC can make such a determination and it does not have to be made until failure. Further, according to this commenter, a requirement that the CIDI

demonstrate that the strategy is least costly dissuades the CIDI from considering other resolution strategies as only one strategy could be “least-cost.”

The IFR requires that a Resolution Plan provide a detailed description of the processes the CIDI employs for assessing the feasibility of the plan under idiosyncratic and industry-wide stress scenarios. One commenter requests clarification of this terminology in light of the requirement that the Resolution Plan strategies should take into account that the failure of the CIDI may occur under baseline, adverse and severely adverse economic conditions. This commenter believes that the Rule’s reference to “idiosyncratic and industry-wide stress scenarios” be deleted to avoid internal inconsistency and to better harmonize the relevant provisions of the Rule.

Another commenter suggests that the Rule take into account the differences among organizations and the range of strategies that each may consider. This commenter requests that less complex institutions be given the ability to submit streamlined Resolution Plans tailored to nature and risk profile of the CIDI.

The IFR allows a CIDI to submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. One commenter believes that the FDIC should not allow a CIDI to submit its initial Resolution Plan assuming the baseline conditions only and recommends that CIDs be required to assume adverse and severely adverse economic conditions for their initial Resolution Plans in order to increase confidence in, and the integrity of, the resolution planning process.

One commenter recommends adopting language directing CIDs to identify and discuss “potential barriers to effective resolution and actions to mitigate these” in order to conform to the FSB’s key attributes of effective resolution regimes for financial institutions.

### *Governance*

One commenter suggests that the Rule clearly permit a committee, rather than a single “senior management official,” to be responsible for development, maintenance, implementation and filing of the Resolution Plan. This commenter suggests that the Rule clarify that it would be appropriate for the CIDI to divide such responsibilities among multiple senior management officials or assign them to a committee, and points out that the Section 165(d) rule recognizes that the responsibility need not be vested in an individual by referring to “senior management official(s)” responsible for resolution planning.

### *Informational Elements*

The IFR sets forth a number of informational elements that a CIDI should include in its plan. One commenter notes that the IFR required a description of material effects that any material event may have on the Resolution Plan and summary of changes that are required to the Resolution Plan, whereas the Section 165(d) rule only requires an explanation of why the event may require changes. This commenter recommends that the FDIC not require more detailed information with the notice of material events than would be required under the Section 165(d) rule.

The IFR requires identification in the Resolution Plan of each payment, clearing and settlement system of which a CIDI is a member. A commenter suggests that the Rule require identification of “material” payment, clearing and settlement systems, and recommends that the Rule be conformed to the Section 165(d) rule, which limits disclosure to systems on which a covered company conducts a material number or value amount of trades or transactions.

The same commenter recommends that the Rule qualify the common or shared personnel, facilities, or systems requirements so that the Resolution Plan only need identify “key” common

or shared personnel, facilities, or systems. This commenter argues that, without a qualifier, the Rule would require exhaustive lists of personnel and systems that would be of little practical use to the FDIC. The commenter points out the limitation of the scope of a parallel informational requirement in the Section 165(d) rule, which requires identification of interconnections and interdependencies that, if disrupted, would materially affect funding or operations.

This commenter also requests that the requirement to describe non-U.S. components of the CIDI's structure and operations be limited to material or key components because it believes it would be more useful to focus on the assets, operations, interrelationships and exposures that are material to the resolution of the CIDI.

Another commenter thought that the IFR overlooks contingent liabilities for correspondent banking and unfunded lending commitments to government subdivisions and social service agencies. This commenter believes that these entities would suffer if CIDI fails and the receiver repudiates its funding obligation, and such action could lead to public panic or distrust in the event that the agency is unable to find another source of liquidity. This commenter suggests that the reporting of unfunded commitments would enable FDIC to develop an action plan to mitigate the adverse effects resulting from the cessation of funding.

#### *Process*

The IFR requires a CIDI to demonstrate its capability to promptly produce the information and data underlying its plan in a format acceptable to the FDIC. One commenter believes that this requirement would be better addressed through the FDIC's ongoing review of Resolution Plans than through a rule-based requirement, and points out how the Section 165(d) rule eliminated a similar data-production requirement in favor of a supervisory approach. This

commenter also states that informational requirements are being developed and data capabilities are evolving, and such improvement and evolution should be part of the supervisory process.

One commenter points out several date discrepancies between the IFR and the Section 165(d) rule. First, there is a difference in effective dates between the IFR, which is effective on January 1, 2012, and the Section 165(d) rule, which is effective on November 30, 2011. The commenter believes that the measurement date should be the same to ensure that any company subject to the Section 165(d) rule and any of its subsidiary insured depository institutions subject to the Rule will have the same initial and subsequent Resolution Plan submission dates. A change in size during the gap between effective dates could result in Resolution Plans under the two rules being due on different dates. Second, there is a discrepancy between the plan submission dates for an insured depository institution that becomes subject to the IFR after its effective date and a company that becomes subject to the Section 165(d) rule after its effective date. Under the Section 165(d) rule, a company that becomes covered after the effective date must submit its initial plan by July 1 of the following year, provided that July 1 of the following year is at least 270 days after the date on which the company becomes covered. Under the IFR, an insured depository institution that becomes covered after the effective date must submit its initial plan by July 1 of the following year, without any proviso ensuring that the CIDI have 270 days from the date it becomes covered to submit its plan. The commenter urges the FDIC to add a similar proviso to the Rule to ensure consistency between the rules and to avoid the potential for different submission dates for a company subject to the Section 165(d) rule and its CIDI subsidiary. Third, it is possible that an insured depository institution that becomes a CIDI after the effective date could have a different initial submission date than if it had been covered as of the effective date because it would presumably have to file on July 1 of the following year,

rather than in accordance with the staggered schedule. The commenter suggests that the FDIC use its discretionary authority to permit a new CIDI additional time to submit its initial plan in these circumstances to avoid differential treatment of similarly situated insured depository institutions.

One commenter points out that, under both the IFR and the Section 165(d) rule, CIDs and covered companies are required to file a notice within 45 days of any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan. The Section 165(d) rule provides that such notice is not required if the date by which the notice must be submitted is within 90 days of the annual Resolution Plan submission date, while the IFR only provides a 45-day window. The commenter requests that the two requirements be conformed.

A commenter suggests the Rule provide that the FDIC will consult with the appropriate federal banking agency for the CIDI and its parent company before determining that a Resolution Plan is not credible. This commenter also suggests that the Rule provide the FDIC will consult with the appropriate foreign supervisors, including the relevant home-country supervisor for the foreign-based parent of the CIDI, before issuing any notice of deficiencies, imposing any requirements or restrictions, or taking any other similar remedial action.

One commenter states that, in determining whether a Resolution Plan is credible, the FDIC should consider whether the resolution strategy envisions breaking the entity into subcomponents for sale. This commenter believes that any Resolution Plan that excludes breakup as an option only perpetuates the risk that the Rule intends to mitigate.

*Burden*

One commenter states that the burden on CIDs whose parent company is not required to file a Resolution Plan under the Section 165(d) rule could be significant and likely exceeds the FDIC's published estimate. Although this commenter does not provide a specific burden estimate, it anticipates that the resources required to produce a Resolution Plan is several times the FDIC's 7,200 hours estimate. The commenter believes the FDIC's estimate may be accurate for CIDs, whose parent is filing a DFA Resolution Plan, but it does not account for the additional burden on savings associations whose parent would not be filing a DFA Resolution Plan.

The FDIC has carefully considered the comments and has made appropriate revisions to the Rule as described below.

### **III. Section-by-Section Analysis of Rule**

*Definitions.* Section 360.10(b) defines certain terms, including “core business lines,” “critical services,” “covered insured depository institution,” “parent company,” “parent company affiliate” and “material entity,” which are key definitions in the Rule.

“Core business lines” means those business lines of the CIDI, including associated operations, services, functions and support that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value. The core business lines of the CIDI are valuable assets of the CIDI. The Resolution Plan should provide a strategy for the sale of the core business lines. The Section 165(d) rule contains a similar definition but, for the Section 165(d) rule the core business lines are determined from the perspective of the covered company rather than the CIDI. For example, the CIDI may be providing services to its holding company, such as payment services, that support a business line of its holding company, such as a brokerage service, that is not a core business line of the CIDI. In such example, payment

services may be identified as a core business line of the CIDI, while its holding company identifies brokerage services as a business line in its DFA Resolution Plan.

“Covered insured depository institution” means an insured depository institution with \$50 billion or more in total assets, as determined based upon the average of the institution’s four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution. Although several commenters requested changes in the scope of insured depository institutions covered by the Rule, after consideration of those comments, the Rule has not been amended. The FDIC needs the information required by the Rule before an institution is in financial distress. The purpose of the Rule is to enable the FDIC to perform its resolution functions most efficiently through extensive planning in cooperation with the CIDI and to enhance its ability to evaluate potential loss severity if an institution fails. History instructs us that the financial condition of a large institution can deteriorate rapidly, and such deterioration is exacerbated in illiquid markets. Additionally, requiring all insured depository institutions of significant size to focus on resolution planning will focus attention on hidden or nascent deficiencies that healthy institutions may have.

“Critical Services” means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operation of the CIDI. The Resolution Plan should provide for the continuation and funding of critical services. For clarity and to avoid confusion, the term “critical services” differs substantially from the term “critical operations” as used in the Section 165(d) rule. The term “critical operations” is used to designate operations of a covered company the discontinuation of which would pose a threat to the financial stability of the United States. In contrast, the term “critical services” is used in the Rule to mean those functions that must be kept



operational during the resolution process to allow the receiver to conduct the resolution in an orderly and efficient manner.

“Parent company” means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, *parent company* means the top-tier of the multi-tiered holding company only.

“Parent company affiliate” means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI. The term is used in identifying the exposures or reliance that the CIDI has on entities in its affiliated group that are not owned or otherwise controlled by the CIDI. In a multi-tier holding company structure, the term includes all holding companies of the CIDI (except the top-tier holding company) and their affiliates (other than the top-tier holding company, the CIDI and subsidiaries of the CIDI).

“Material entity” means a company that is significant to the activities of a critical service or core business line. For example, the legal entity utilized by the CIDI as the contracting entity for a core business line would be a material entity. Also, a subsidiary of the CIDI that provides a critical service would be a material entity.

*Resolution Plans to be submitted by the CIDI to the FDIC.* Pursuant to Section 360.10(c), the initial filings will be staggered to correspond to the schedule of filings by parent companies under the Section 165(d) rule. This schedule also allows the FDIC to focus on the most complex or largest institutions first. In response to comments on the IFR, the date for calculating total nonbank assets in the Rule has been change to November 30, 2011. The Rule requires the first filing group, which consists of each CIDI whose parent company, as of November 30, 2011, had \$250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company’s total U.S. nonbank assets), to file

their initial Resolution Plans on July 1, 2012. The Rule requires the second filing group, which consists of each CIDI not included in the first group whose parent company, as of November 30, 2011, had \$100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company's total U.S. nonbank assets) to file their initial Resolution Plans on or before July 1, 2013. The Rule requires the third filing group, which consists of the remaining CIDs, to file their initial Resolution Plans on or before December 31, 2013. The Rule also provides that, on a case-by-case basis, the FDIC may extend, upon request, the implementation and updating time frames of the Rule.

After the initial Resolution Plan is submitted, each CIDI is required to submit a new Resolution Plan annually on or before the anniversary date of the date for the submission of its initial plan.

With respect to an insured depository institution that becomes a CIDI after the effective date of the Rule and in response to comments, the Rule was revised to coincide with the Section 165(d) rule's filing requirement for such an institution's parent. The Rule provides that an insured depository institution that becomes a CIDI after the effective date of the Rule shall submit its initial Resolution Plan no later than the next July 1 following the date the insured depository institution becomes a CIDI, provided such date occurs no earlier than 270 days after the date on which the insured depository institution became a CIDI.

A CIDI is required to file a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or change which results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI. The FDIC desires a notice only when an event results in, or could reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI such that the Resolution Plan would be ineffective or require

material amendment to be effective. A notice is not required if an event does not result in, or could not reasonably be foreseen to have, a material effect on the Resolution Plan of the CIDI. In regard to what constitutes a material effect on the Resolution Plan, the effect on the Resolution Plan should be of such significance as to render the Resolution Plan ineffective, in whole or in part, until an update is made to the plan. A notice should describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. One commenter noted that the IFR provision regarding notice of material event varied from the similar provision in the Section 165(d) rule and requested that the Rule be modified to be consistent with the Section 165(d) rule. The Rule has been modified to be consistent with the Section 165(d) rule with respect to both the content of the notice and the exception, i.e., under the Rule, a CIDI is not required to file a notice of material event within 90 days prior to the date on which it is required to file its annual resolution plan.

*Incorporation of data and other information from a Dodd-Frank Act resolution plan.* The CIDI may incorporate data and other information from a DFA Resolution Plan filed by its parent company.

*Content of the Resolution Plan.* Section 360.10(c)(2) requires each CIDI to submit a Resolution Plan that should enable the FDIC to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823, and specifies the minimum content of the Resolution Plan. The Resolution Plan strategies should

take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the FRB pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial Resolution Plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. While one commenter suggested that a CIDI's first iteration of a Resolution Plan should assume a baseline, adverse and severely adverse economic conditions, the FDIC recognizes the burden that the Rule imposes on CIDs and the challenge that CIDs face in preparing their initial Resolution Plans. To reduce this burden, the FDIC is requiring that feasibility for initial Resolution Plans be assessed under only baseline economic condition scenarios. Subsequent Resolution Plans must assess feasibility under adverse and severely adverse economic condition scenarios as well.

The Resolution Plan should include an executive summary that summarizes the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual Resolution Plan should also describe material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan, material changes to the CIDI's Resolution Plan from its most recently filed plan, and any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its Resolution Plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the Resolution Plan.

The Resolution Plan should provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. A mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities should be

provided that identifies which legal entities are utilized in the conduct of such business line. The Resolution Plan should include a discussion of the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC or result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization should be identified.

The Resolution Plan should identify critical services and providers of critical services. A mapping of critical services to material entities and core business lines should be provided that identifies which legal entities are providing the critical services and which business lines are utilizing the critical services. The Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services are provided by the parent company or a parent company affiliate, the Resolution Plan should describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. The ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure should be assessed.

The Resolution Plan should identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI. One commenter suggested that the Rule require the CIDI to identify potential barriers or other

obstacles to an orderly resolution of the CIDI. The Rule now provides that the CIDI identify potential barriers or other material obstacles to an orderly resolution of the CIDI, interconnections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

The Resolution Plan should provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. The Resolution Plan should also describe remediation or mitigating steps that can be taken to eliminate or mitigate obstacles to such separation.

The Resolution Plan should provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases. The Resolution Plan should also describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI as required by Section 13(c)(4)(A) of the FDI Act, 12 U.S.C. 1823(c)(4)(A). One commenter suggested that the Rule should not require the CIDI to demonstrate a strategy is least costly *ex ante*. The Rules requires the CIDI to propose reasonable resolution options and demonstrate how one is least costly relative to liquidation or other resolution methods. A CIDI can demonstrate a selected strategy is least costly by offering a

range of transactions and be ensuring that the transactions are offered broadly to the market, competitive bids are taken and bids are evaluated carefully. The CIDI can apply those strategies, or others it may develop, for demonstrating that the option ultimately selected will be least costly.

Among potential strategies for the payment of depositors that should be considered are: (a) a cash payment of insured deposits<sup>8</sup>, (b) a purchase and assumption transaction with an insured depository institution to assume insured deposits, (c) a purchase and assumption transaction with an insured depository institution to assume all deposits, (d) a purchase and assumption transaction with multiple insured depository institutions in which branches are broken up and sold separately in order to maximize franchise value, and (e) transfer of insured deposits to a bridge institution chartered to assume such deposits, as an interim step prior to the purchase of the deposit franchise and assumption of such deposits by one or more insured depository institutions.<sup>9</sup>

Among potential strategies for the sale of core business lines and assets that should be considered are: (a) retention of some or all of the assets in receivership, to be marketed broadly to eligible purchasers, including insured depository institutions as well as other interested purchasers, (b) sale of all or a portion of the core business lines and assets in a purchase and assumption agreement, to one or more insured depository institutions, and (c) transfer of all or a portion of the core business lines and assets to a bridge institution chartered to continue

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<sup>8</sup> This task could be accomplished through the exercise of FDIC's authority to temporarily operate a new depository institution under Section 11(m) of the FDI Act, 12 U.S.C. 1821(m).

<sup>9</sup> A bridge depository institution is a new, temporary, full-service insured depository institution controlled by the FDIC. It is designed to "bridge" the gap between the failure of an insured depository institution and the time when the FDIC can implement a satisfactory acquisition by a third party. Section 11(n) of the FDI Act, 12 U.S.C. 1821(n).

operating the core business lines and service the assets transferred to it, as an interim step prior to the sale of such core business lines and assets through appropriate marketing strategies.<sup>10</sup>

In developing a resolution strategy, each CIDI may utilize one or more of the methods described above, but is not limited to these methods. As suggested by one commenter, a CIDI may consider a post-appointment recapitalization in its Resolution Plan and a CIDI should address this option if it believes a recapitalization would be among the resolution options that are least costly to the deposit insurance fund. Another commenter suggested a breakup of an institution should also be considered. A breakup is a legitimate resolution method and a CIDI may consider that as a resolution option. The resolution strategy should be tailored to the size, complexity and risk profile of the institution.

In addition to the strategic analyses described above, the Resolution Plan should provide a detailed description of the processes the CIDI employs for determining the current market values and marketability of core business lines and material asset holdings, assessing the feasibility of the CIDI's plans, under baseline, adverse and severely adverse economic condition scenarios for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the Resolution Plan, and assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines. This information will allow the FDIC to understand the basis for the valuations included in the Resolution Plan and to consider how those processes could be utilized in a resolution.

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<sup>10</sup> One significant benefit of using the bridge depository institution relates to qualified financial contracts. Qualified financial contracts are not subject to either the ipso facto rule or the 90-day stay on enforcement of contracts in default. However, the FDI Act precludes a counterparty from terminating a qualified financial contract solely by reason of the appointment of a receiver for a insured depository institution (a) until 5 pm (Eastern time) on the business day following the date of appointment; or (b) after the counterparty has received notice that the contract has been transferred to a solvent financial institution, including a bridge insured depository institution.



Major counterparties should be identified. The CIDI should describe the interconnections, interdependencies and relationships with such major counterparties and analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI. The Resolution Plan should describe any material off-balance-sheet exposures (including unfunded commitments, guarantees and contractual obligations) of the CIDI and those exposures should be mapped to core business lines.

The Resolution Plan should identify and describe processes used by the CIDI to determine to whom the CIDI has pledged collateral, identify the person or entity that holds such collateral, and identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

The Resolution Plan should describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Each system on which the CIDI conducts a material number or value amount of trades should be identified. Each trading system should be mapped to the CIDI's legal entities and core business lines. The Resolution Plan should identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Hedging strategies of the CIDI should be described.

An unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI should be provided. Amounts attributed to entities that are not material may be aggregated on the consolidating schedule. Financial statements for material entities should be provided. When available, audited financial statements should be provided.

The Resolution Plan should identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Membership in each such system should be mapped to the CIDI's legal entities and core business lines. Systems that are immaterial in resolution planning, such as a local check clearing house, do not need to be identified.

The Resolution Plan should provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which should be mapped to core business lines and critical services. The Resolution Plan should also describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

The Resolution Plan should describe any material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI and any of its subsidiaries have with its parent or any parent company affiliate. All material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions should be described. The description should clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.

The Resolution Plan should describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and

capital markets operations in which it plays a dominant role. Critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy should be discussed.

The Resolution Plan should describe material components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Details should be provided on the location and amount of foreign deposits and assets. The Resolution Plan should discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures which should be mapped to legal entities and core business lines.

The Resolution Plan should provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. The legal owner or licensor of the systems should be identified. The use and function of the system or application should be described. A listing of service level agreements and any software and systems licenses or associated intellectual property related thereto should be provided. Any disaster recovery or other backup plans should be identified and described. The Resolution Plan should identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems. Personnel may be identified by a department name or other identifier (for example, the accounting department personnel) when the names of such personnel are retrievable, upon request, using such identifier. The Resolution Plan should also describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the Resolution Plan to management of the CIDI and, upon request to the FDIC. Furthermore, the Resolution Plan

should describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

The Resolution Plan should include a detailed description of how resolution planning is integrated into the corporate governance structure and processes of the CIDI, the CIDI's policies, procedures, and internal controls governing preparation and approval of the Resolution Plan, and the identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section. One commenter suggested that the Rule be modified to make clear that it would be appropriate if a CIDI were to divide responsibilities among multiple senior management officials or assign them to a committee. While it may be appropriate to divide up the responsibilities, to assure appropriate oversight, the primary responsibility and accountability for the development, maintenance, implementation, and filing of the Resolution Plan and for the CIDI's compliance with this section should be assigned to one senior management official.

The Resolution Plan should describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed Resolution Plan to assess the viability of or improve the Resolution Plan.

The Resolution Plan should identify and discuss any other material factor that may impede the resolution of the CIDI.

*Approval by CIDI's Board of Directors.* The CIDI's board of directors must approve the Resolution Plan. Such approval shall be noted in the Board minutes.

*Review of Resolution Plan.* The FDIC desires to work closely with CIDIIs in the development of their Resolution Plans and is dedicating staff for that purpose. The FDIC expects the review process to evolve as CIDIIs gain more experience in preparing their Resolution Plans. The FDIC recognizes that plans will vary by institution and, in their evaluation of plans, will take into account variances among institutions in their core business lines, critical operations, foreign operations, capital structure, risk, complexity, financial activities (including the financial activities of their subsidiaries), size and other relevant factors. Each Resolution Plan, however, must be credible. A Resolution Plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

Because each Resolution Plan is expected to be unique, the FDIC encourages CIDIIs to ask questions and, if so desired, to arrange a meeting with the FDIC. The FDIC expects the initial Resolution Plan will provide the foundation for developing more robust annual Resolution Plans.

After receiving a Resolution Plan, the FDIC will determine whether the submitted plan satisfies the minimum informational requirements of this section. If the FDIC determines that a Resolution Plan is informationally incomplete or that additional information is necessary to facilitate review of the Resolution Plan, the FDIC will return the Resolution Plan to the CIDI and inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required. The CIDI must resubmit an informationally complete Resolution Plan or such additional information as requested to facilitate review of the

Resolution Plan no later than 30 days after receiving the notice described in preceding sentence, or such other time period as the FDIC may determine.

Upon acceptance of a Resolution Plan as complete, the FDIC will review the Resolution Plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the Resolution Plan of a CIDI submitted is not credible, the FDIC will notify the CIDI in writing of such determination. Any notice provided under this paragraph will identify the aspects of the Resolution Plan that the FDIC determines to be deficient.

Within 90 days of receiving a notice of deficiencies issued pursuant to the preceding paragraph, or such shorter or longer period as the FDIC may determine, a CIDI must submit a revised Resolution Plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

Upon a written request by a CIDI, the FDIC may extend any time period under the Rule. Each extension request shall be in writing and describe the basis and justification for the request.

*Implementation Matters.* In order to allow evaluation of the Resolution Plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the Resolution Plan and the ability of the CIDI to implement the Resolution Plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

The CIDI's ability to produce the information and data underlying its resolution rapidly and on demand is a vital element in a credible Resolution Plan. While one commenter believes that this requirement would be better addressed through the FDIC's ongoing review of Resolution Plans

than through a rule-based requirement, without up-to-date information on the CIDI, the FDIC, as receiver, would be hampered in implementing the Resolution Plan. Therefore, within a reasonable period of time, as determined by the FDIC, after the filing of its initial Resolution Plan, the CIDI must demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, accurate and verifiable data underlying the key aspects of Resolution Plan. The FDIC understands that the capability to produce the data underlying the key aspects of the Resolution Plan will vary by CIDI and, therefore, intends to review and discuss the CIDI's plans to remedy deficiencies as part of their review of a CIDI's initial Resolution Plan. In addition, the Rule has been modified to require the FDIC shall consult with the appropriate Federal banking agency for the CIDI before any finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.

Notwithstanding the general requirements of this section, on a case-by-case basis, the FDIC may extend, upon notice, the implementation and updating time frames for all or part of the requirements of this section. The FDIC may also, upon application of a CIDI, exempt a CIDI from one or more of the requirements of this section.

*No limiting effect on the FDIC as receiver.* No Resolution Plan provided pursuant to the Rule shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

*Confidentiality of Information Submitted Pursuant to this Section.* Several commenters requested that the Resolution Plans be treated as exempt from disclosure under the Freedom of Information Act ("FOIA"). The FDIC is aware of and sensitive to the significant concerns regarding confidentiality of Resolution Plans. The Rule contemplates and requires the submission of highly detailed, internal proprietary information of CIDs. This is the type of

information that CIDs would not customarily make available to the public and that an agency typically would have access to and could review as part of the supervisory process in assessing, for example, the safety and soundness of a regulated institution. In the FDIC's view, release of this information would impede the quality and extent of information provided by CIDs and could significantly impact the FDIC's efforts to encourage effective and orderly resolution of the CIDs in a crisis.

Under the Rule, the confidentiality of Resolution Plans is to be assessed in accordance with the applicable exemptions under the FOIA, 5 U.S.C. 552(b), and the FDIC's Disclosure of Information Rule, 12 C.F.R. 309. The FDIC certainly expects that large portions of the submissions will contain or consist of "trade secrets and commercial or financial information obtained from a person and privileged or confidential" and information that is "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions." This information is subject to withholding under exemptions 4 and 8 of the FOIA, 5 U.S.C. 552(b)(4) and (8).

The FDIC also recognizes, however, that the regulation calls for the submission of details regarding CIDs that are publicly available or otherwise are not sensitive and should be made public. Unless inextricably intertwined with exempt information, these details would be releasable under the FOIA. The FDIC is concerned that it and the courts could reach inconsistent conclusions regarding which portions of the Resolution Plans contain or consist of reasonably segregable nonexempt information. This uncertainty, in turn, could impact the quality and content of the information provided by CIDs.



In order to reduce this uncertainty, the Rule requires Resolution Plans to be divided into two sections: a public section and a confidential section. The Rule further specifies the scope and content of the information that is to comprise each section. In the FDIC's view, the details required to be contained in the public section are or should be publicly available. The public section of the Resolution Plan should be segregated and separately identified from the confidential section. The public section will be made available to the public in accordance with the FDIC's Disclosure of Information Rule, 12 CFR part 309.

The confidential section of a Resolution Plan should contain and consist of information that is subject to withholding under one or more of the FOIA exemptions. A CIDI should submit a properly substantiated request for confidential treatment of any details in the confidential section that it believes are subject to withholding under exemption 4 of the FOIA. In addition, the FDIC will have to make formal exemption and segregability determinations if and when a plan is requested under the FOIA.

The public section of the Resolution Plan consists of an executive summary of the Resolution Plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI: (i) the names of material entities; (ii) a description of core business lines; (iii) consolidated financial information regarding assets, liabilities, capital and major funding sources; (iv) a description of derivative activities and hedging activities; (v) a list of memberships in material payment, clearing and settlement systems; (vi) a description of foreign operations; (vii) the identities of material supervisory authorities; (viii) the identities of the principal officers; (ix) a description of the corporate governance structure and processes related to resolution planning; (x) a description of material management information systems; and (xi) a

description, at a high level, of the CIDI's resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

#### **IV. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) ("PRA"), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

**Title:** Resolution plans required for insured depository institutions with \$50 billion or more in total assets.

**OMB Number:** 3064-New Collection.

**Affected Public:** Insured depository institutions with \$50 billion or more in total assets.

*A. Estimated Number of Respondents for Contingent Resolution Plan: 37.*

**Frequency of Response:** Once.

**Estimated Time per Response:** 7,200 hours per respondent.

**Estimated Total Initial Burden:** 266,400 hours.

*B. Estimated Number of Respondents for Annual Update of Resolution Plan: 37.*

**Frequency of Response:** Annual.

**Estimated Time per Response:** 452 hours per respondent.

**Estimated Total Initial Burden:** 16,724 hours.

*C. Estimated Number of Respondents for Notice of Material Change affecting Resolution Plan: 37.*

**Frequency of Response:** Zero to two times annually.

**Estimated Time per Response:** 226 hours per respondent.

***Estimated Total Initial Burden:*** 8,362 hours.

*Background/General Description of Collection:* Section 360.10 contains collections of information pursuant to the PRA. In particular, the following requirements of the Rule constitute collections of information as defined by the PRA: all CIDs are required to submit to the FDIC a Resolution Plan that contains certain required information and meets certain described standards; updates to the analysis and plan are required to be submitted annually, with certain notices to be filed more frequently as a result of material changes. The collections of information contained in the Rule are being submitted to OMB for review.

## **V. Regulatory Flexibility Act**

The Regulatory Flexibility Act 5 U.S.C. 601 et seq. (RFA) requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.<sup>11</sup> Under regulations issued by the Small Business Administration (“SBA”), a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7 million or less in assets to \$175 million or less in assets.<sup>12</sup> Therefore, insured depository institutions with assets sizes of \$175 million or less are considered small entities for purposes of the RFA.

The Rule would apply only to insured depository institutions with \$50 billion or more in total assets. The Rule would apply to 37 insured depository institutions upon its effective date. Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Rule will

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<sup>11</sup> See 5 U.S.C. 603, 604 and 605.

<sup>12</sup> 13 CFR 121.201.

not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis under the RFA is not required.

## **VI. Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families**

The FDIC has determined that the Rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

## **VII. Plain Language**

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat.1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Rule in a simple and straightforward manner.

## **VIII. Small Business Regulatory Enforcement Fairness Act**

The Office of Management and Budget has determined that the Rule is not a “major rule” within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Rule may be reviewed.

## **IX. Riegle Community Development and Regulatory Improvement Act**

Section 302 of Riegle Community Development and Regulatory Improvement Act (RCDRIA)<sup>13</sup> generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form unless an agency finds good cause that the regulations should become effective sooner. The effective date of the Rule is April 1, 2012, which is the first day of the calendar quarter which begins on or after the date on which the regulations are published in final form, as required by RCDRIA.

#### List of Subjects in 12 CFR Part 360

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and record keeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends Part 360 of title 12 of the Code of Federal Regulations as follows:

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<sup>13</sup> 12 U.S.C. 4802.

## **Part 360 -- RESOLUTION AND RECEIVERSHIP RULES**

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101-73, 103 Stat. 357.

2. Revise § 360.10 to read as follows:

### **§ 360.10 Resolution plans required for insured depository institutions with \$50 billion or more in total assets.**

(a) *Scope and purpose.* This section requires each insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure. This section also establishes the rules and requirements regarding the submission and content of a resolution plan as well as procedures for review by the FDIC of a resolution plan. This section requires a covered insured depository institution to submit a resolution plan that should enable the FDIC, as receiver, to resolve the institution under Sections 11 and 13 of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. 1821 and 1823, in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and

minimizes the amount of any loss realized by the creditors in the resolution. This rule is intended to ensure that the FDIC has access to all of the material information it needs to resolve efficiently a covered insured depository institution in the event of its failure.

(b) *Definitions* -- (1) *Affiliate* has the same meaning given such term in Section 3(w)(6) of the FDI Act, 12 U.S.C. 1813(w)(6).

(2) *Company* has the same meaning given such term in § 362.2(d) of the FDIC's Regulations, 12 CFR 362.2(d).

(3) *Core business lines* means those business lines of the covered insured depository institution ("CIDI"), including associated operations, services, functions and support, that, in the view of the CIDI, upon failure would result in a material loss of revenue, profit, or franchise value.

(4) *Covered insured depository institution ("CIDI")* means an insured depository institution with \$50 billion or more in total assets, as determined based upon the average of the institution's four most recent Reports of Condition and Income or Thrift Financial Reports, as applicable to the insured depository institution.

(5) *Critical services* means services and operations of the CIDI, such as servicing, information technology support and operations, human resources and personnel that are necessary to continue the day-to-day operations of the CIDI.

(6) *Foreign-based company* means any company that is not incorporated or organized under the laws of the United States.

(7) *Insured depository institution* shall have the meaning given such term in Section 3(c)(2) of the FDI Act, 12 U.S.C. 1813(c)(2).

(8) *Material entity* means a company that is significant to the activities of a critical service or core business line.

(9) *Parent company* means the company that controls, directly or indirectly, an insured depository institution. In a multi-tiered holding company structure, *parent company* means the top-tier of the multi-tiered holding company only.

(10) *Parent company affiliate* means any affiliate of the parent company other than the CIDI and subsidiaries of the CIDI.

(11) *Resolution plan* means the plan described in paragraph (c) of this section for resolving the CIDI under Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823.

(12) *Subsidiary* has the same meaning given such term in Section 3(w)(4) of the FDI Act, 12 U.S.C. 1813(w)(4).



(13) *Total assets* are defined in the instructions for the filing of Reports of Condition and Income and Thrift Financial Reports, as applicable to the insured depository institution, for determining whether it qualifies as a CIDI.

(14) *United States* means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa and the Virgin Islands.

(c) *Resolution Plans to be submitted by CIDI to FDIC.*

(1) *General.* (i) *Initial Resolution Plans Required.* Each CIDI shall submit a resolution plan to the FDIC, Attention: Office of Complex Financial Institutions, 550 17<sup>th</sup> Street, NW.,

Washington, DC 20429, on or before the date set forth below (“Initial Submission Date”):

(A) July 1, 2012, with respect to a CIDI whose parent company, as of November 30, 2011, had \$250 billion or more in total nonbank assets (or in the case of a parent company that is a foreign-based company, such company’s total U.S. nonbank assets);

(B) July 1, 2013, with respect to any CIDI not described paragraph (c)(1)(i)(A) of this section whose parent company, as of November 30, 2011, had \$100 billion or more in total nonbank assets (or, in the case of a parent company that is a foreign-based company, such company’s total U.S. nonbank assets); and

(C) December 31, 2013, with respect to any CIDI not described in of this paragraph (c)(1)(i)(A) or (B) of this section.

(ii) *Submission by New CIDs.* An insured depository institution that becomes a CIDI after April 1, 2012 shall submit its initial resolution plan no later than the next July 1 following the date the insured depository institution becomes a CIDI, provided such date occurs no earlier than 270 days after the date on which the insured depository institution became a CIDI.

(iii) After filing its initial Resolution Plan pursuant to paragraph (c)(1)(i) or (c)(1)(ii) of this section, each CIDI shall submit a Resolution Plan to the FDIC annually on or before each anniversary date of its Initial Submission Date.

(iv) Notwithstanding anything to the contrary in this paragraph (c)(1), the FDIC may determine that a CIDI shall file its initial or annual Resolution Plan by a date other than as provided in this paragraph (c). The FDIC shall provide a CIDI with written notice of a determination under this paragraph (c)(1)(iv) no later than 180 days prior to the date on which the FDIC determines to require the CIDI to submit its Resolution Plan.

(v) *Notice of Material Events.* (A) Each CIDI shall file with the FDIC a notice no later than 45 days after any event, occurrence, change in conditions or circumstances or other change that results in, or could reasonably be foreseen to have, a material effect on the resolution plan of the CIDI. Such notice shall describe the event, occurrence or change and explain why the event, occurrence or change may require changes to the resolution plan. The CIDI shall address any event, occurrence or change with respect to which it has provided notice pursuant hereto in the following resolution plan submitted by the CIDI.

(B) A CIDI shall not be required to file a notice under paragraph (c)(1)(v)(A) of this section if the date on which the CIDI would be required to submit a notice under paragraph (c)(1)(v)(A) would be within 90 days prior to the date on which the CIDI is required to file an annual Resolution Plan under paragraph (c)(1)(iii) of this section.

(vi) *Incorporation of data and other information from a Dodd-Frank Act resolution plan.* The CIDI may incorporate data and other information from a resolution plan filed pursuant to Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5365(d), by its parent company.

(2) *Content of the Resolution Plan.* The resolution plan submitted should enable the FDIC, as receiver, to resolve the CIDI in the event of its insolvency under the FDI Act in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss realized by the creditors in the resolution in accordance with Sections 11 and 13 of the FDI Act, 12 U.S.C. 1821 and 1823. The resolution plan strategies should take into account that failure of the CIDI may occur under the baseline, adverse and severely adverse economic conditions developed by the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. 5365(i)(1)(B); provided, however, a CIDI may submit its initial resolution plan assuming the baseline conditions only, or, if a baseline scenario is not then available, a reasonable substitute developed by the CIDI. At a minimum, the resolution plan shall:

(i) *Executive Summary.* Include an executive summary describing the key elements of the CIDI's strategic plan for resolution under the FDI Act in the event of its insolvency. After the CIDI files its initial plan, each annual resolution plan shall also describe:

(A) Material events, such as acquisitions, sales, litigation and operational changes, since the most recently filed plan that may have a material effect on the plan;

(B) Material changes to the CIDI's resolution plan from its most recently filed plan; and

(C) Any actions taken by the CIDI since filing of the previous plan to improve the effectiveness of its resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to the effective and timely execution of the resolution plan.

(ii) *Organizational Structure: Legal Entities; Core Business Lines and Branches.* Provide the CIDI's, parent company's, and affiliates' legal and functional structures and identify core business lines. Provide a mapping of core business lines, including material asset holdings and liabilities related thereto, to material entities. Discuss the CIDI's overall deposit activities including, among other things, unique aspects of the deposit base or underlying systems that may create operational complexity for the FDIC, result in extraordinary resolution expenses in the event of failure and a description of the branch organization, both domestic and foreign. Identify key personnel tasked with managing core business lines and deposit activities and the CIDI's branch organization.

(iii) *Critical Services.* Identify critical services and providers of critical services. Provide a mapping of critical services to material entities and core business lines. Describe the CIDI's strategy for continuing critical services in the event of the CIDI's failure. When critical services

are provided by the parent company or a parent company affiliate, describe the CIDI's strategy for continuing critical services in the event of the parent company's or parent company affiliate's failure. Assess the ability of each parent company affiliate providing critical services to function on a stand-alone basis in the event of the parent company's failure.

*(iv) Interconnectedness to Parent Company's Organization; Potential Barriers or Material Obstacles to Orderly Resolution.* Identify the elements or aspects of the parent company's organizational structure, the interconnectedness of its legal entities, the structure of legal or contractual arrangements, or its overall business operations that would, in the event the CIDI were placed in receivership, diminish the CIDI's franchise value, obstruct its continued business operations or increase the operational complexity to the FDIC of resolution of the CIDI. Identify potential barriers or other material obstacles to an orderly resolution of the CIDI, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such barriers or obstacles.

*(v) Strategy to Separate from Parent Company's Organization.* Provide a strategy to unwind or separate the CIDI and its subsidiaries from the organizational structure of its parent company in a cost-effective and timely fashion. Describe remediation or mitigating steps that could be taken to eliminate or mitigate obstacles to such separation.

*(vi) Strategy for the Sale or Disposition of Deposit Franchise, Business Lines and Assets.* Provide a strategy for the sale or disposition of the deposit franchise, including branches, core business lines and major assets of the CIDI in a manner that ensures that depositors receive

access to their insured deposits within one business day of the institution's failure (two business days if the failure occurs on a day other than Friday), maximizes the net present value return from the sale or disposition of such assets and minimizes the amount of any loss realized in the resolution of cases.

(vii) *Least Costly Resolution Method*. Describe how the strategies for the separation of the CIDI and its subsidiaries from its parent company's organization and sale or disposition of deposit franchise, core business lines and major assets can be demonstrated to be the least costly to the Deposit Insurance Fund of all possible methods for resolving the CIDI.

(viii) *Asset Valuation and Sales*. Provide a detailed description of the processes the CIDI employs for:

(A) Determining the current market values and marketability of core business lines and material asset holdings;

(B) Assessing the feasibility of the CIDI's plans, under baseline, adverse and severely adverse economic condition scenarios for executing any sales, divestitures, restructurings, recapitalizations, or similar actions contemplated in the CIDI's resolution plan; and

(C) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding and operations of the CIDI and its core business lines.

(ix) *Major Counterparties*. Identify the major counterparties of the CIDI and describe the interconnections, interdependencies and relationships with such major counterparties. Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the CIDI.

(x) *Off-balance-sheet Exposures.* Describe any material off-balance-sheet exposures (including unfunded commitments, guarantees and contractual obligations) of the CIDI and map those exposures to core business lines.

(xi) *Collateral Pledged.* Identify and describe processes used by the CIDI to:

(A) Determine to whom the CIDI has pledged collateral;

(B) Identify the person or entity that holds such collateral; and

(C) Identify the jurisdiction in which the collateral is located; and if different, the jurisdiction in which the security interest in the collateral is enforceable against the CIDI.

(xii) *Trading, derivatives and hedges.* Describe the practices of the CIDI and its core business lines related to the booking of trading and derivative activities. Identify each system on which the CIDI conducts a material number or value amount of trades. Map each trading system to the CIDI's legal entities and core business lines. Identify material hedges of the CIDI and its core business lines related to trading and derivative activities, including a mapping to legal entity. Describe hedging strategies of the CIDI.

(xiii) *Unconsolidated Balance Sheet of CIDI; Material Entity Financial Statements.* Provide an unconsolidated balance sheet for the CIDI and a consolidating schedule for all material entities that are subject to consolidation with the CIDI. Provide financial statements for material entities. When available, audited financial statements should be provided.

(xiv) *Payment, clearing and settlement systems.* Identify each payment, clearing and settlement system of which the CIDI, directly or indirectly, is a member. Map membership in each such system to the CIDI's legal entities and core business lines.

(xv) *Capital Structure; Funding Sources.* Provide detailed descriptions of the funding, liquidity and capital needs of, and resources available to, the CIDI and its material entities, which shall be mapped to core business lines and critical services. Describe the material components of the liabilities of the CIDI and its material entities and identify types and amounts of short-term and long-term liabilities by type and term to maturity, secured and unsecured liabilities and subordinated liabilities.

(xvi) *Affiliate Funding, Transactions, Accounts, Exposures and Concentrations.* Describe material affiliate funding relationships, accounts, and exposures, including terms, purpose, and duration, that the CIDI or any of its subsidiaries have with its parent or any parent company affiliate. Include in such description material affiliate financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions. Clearly identify the nature and extent to which parent company or parent company affiliates serve as a source of funding to the CIDI and its subsidiaries, the terms of any contractual arrangements, including any capital maintenance agreements, the location of related assets, funds or deposits and the mechanisms by which funds can be downstreamed from the parent company to the CIDI and its subsidiaries.



(xvii) *Systemically Important Functions*. Describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Discuss critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

(xviii) *Cross-Border Elements*. Describe material components of the CIDI's structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. Discuss the nature and extent of the CIDI's cross-border assets, operations, interrelationships and exposures and map to legal entities and core business lines.

(xix) *Management Information Systems; Software Licenses; Intellectual Property*. Provide a detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the CIDI and its subsidiaries. Identify the legal owner or licensor of the systems identified above; describe the use and function of the system or application, and provide a listing of service level agreements and any software and systems licenses or associated intellectual property related thereto. Identify and discuss any disaster recovery or other backup plans. Identify common or shared facilities and systems as well as personnel necessary to operate such facilities and systems. Describe the capabilities of the CIDI's processes and systems to collect, maintain, and report the information and other data underlying the resolution

plan to management of the CIDI and, upon request to the FDIC. Describe any deficiencies, gaps or weaknesses in such capabilities and the actions the CIDI intends to take to promptly address such deficiencies, gaps, or weaknesses, and the time frame for implementing such actions.

(xx) *Corporate Governance*. Include a detailed description of:

(A) How resolution planning is integrated into the corporate governance structure and processes of the CIDI;

(B) The CIDI's policies, procedures, and internal controls governing preparation and approval of the resolution plan; and

(C) The identity and position of the senior management official of the CIDI who is primarily responsible and accountable for the development, maintenance, implementation, and filing of the resolution plan and for the CIDI's compliance with this section.

(xxi) *Assessment of the Resolution Plan*. Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the CIDI since the date of the most recently filed resolution plan to assess the viability of or improve the resolution plan.

(xxii) *Any other material factor*. Identify and discuss any other material factor that may impede the resolution of the CIDI.

(3) *Approval*. The CIDI's board of directors must approve the resolution plan. Such approval shall be noted in the Board minutes.

*(4) Review of Resolution Plan.*

(i) Each resolution plan submitted shall be credible. A resolution plan is credible if its strategies for resolving the CIDI, and the detailed information required by this section, are well-founded and based on information and data related to the CIDI that are observable or otherwise verifiable and employ reasonable projections from current and historical conditions within the broader financial markets.

(ii) After receiving a resolution plan, the FDIC shall determine whether the submitted plan satisfies the minimum informational requirements of paragraph (c)(2) of this section; and either acknowledge acceptance of the plan for review or return the resolution plan if the FDIC determines that it is incomplete or that substantial additional information is required to facilitate review of the resolution plan.

(iii) If the FDIC determines that a resolution plan is informationally incomplete or that additional information is necessary to facilitate review of the plan, the FDIC shall inform the CIDI in writing of the area(s) in which the plan is informationally incomplete or with respect to which additional information is required.

(iv) The CIDI shall resubmit an informationally complete resolution plan or such additional information as requested to facilitate review of the resolution plan no later than 30 days after receiving the notice described in paragraph (c)(4)(iii) of this section, or such other time period as the FDIC may determine.

(v) Upon acceptance of a resolution plan as informationally complete, the FDIC will review the resolution plan in consultation with the appropriate Federal banking agency for the CIDI and its parent company. If, after consultation with the appropriate Federal banking agency for the CIDI, the FDIC determines that the resolution plan of a CIDI submitted is not credible, the FDIC shall notify the CIDI in writing of such determination. Any notice provided under this paragraph shall identify the aspects of the resolution plan that the FDIC determines to be deficient.

(vi) Within 90 days of receiving a notice of deficiencies issued pursuant to the preceding paragraph, or such shorter or longer period as the FDIC may determine, a CIDI shall submit a revised resolution plan to the FDIC that addresses the deficiencies identified by the FDIC and discusses in detail the revisions made to address such deficiencies.

(vii) Upon its own initiative or a written request by a CIDI, the FDIC may extend any time period under this section. Each extension request shall be in writing and shall describe the basis and justification for the request.

(d) *Implementation Matters.* (1) In order to allow evaluation of the resolution plan, each CIDI must provide the FDIC such information and access to such personnel of the CIDI as the FDIC determines is necessary to assess the credibility of the resolution plan and the ability of the CIDI to implement the resolution plan. The FDIC will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(2) Within a reasonable period of time, as determined by the FDIC, following its Initial Submission Date, the CIDI shall demonstrate its capability to produce promptly, in a time frame and format acceptable to the FDIC, the information and data underlying its resolution plan. The FDIC shall consult with the appropriate Federal banking agency for the CIDI before finding that the CIDI's capability to produce the information and data underlying its resolution plan is unacceptable.

(3) Notwithstanding the general requirements of paragraph (c)(1) of this section, on a case-by-case basis, the FDIC may extend, on its own initiative or upon written request, the implementation and updating time frames for all or part of the requirements of this section.

(4) FDIC may, on its own initiative or upon written request, exempt a CIDI from one or more of the requirements of this section.

(e) *No limiting effect on FDIC.* No resolution plan provided pursuant to this section shall be binding on the FDIC as supervisor, deposit insurer or receiver for a CIDI or otherwise require the FDIC to act in conformance with such plan.

(f) *Form of Resolution Plans; Confidential Treatment of Resolution Plans.* (1) Each resolution plan of a CIDI shall be divided into a Public Section and a Confidential Section. Each CIDI shall segregate and separately identify the Public Section from the Confidential Section. The Public Section shall consist of an executive summary of the resolution plan that describes the business of the CIDI and includes, to the extent material to an understanding of the CIDI:

- (i) The names of material entities;
- (ii) A description of core business lines;
- (iii) Consolidated financial information regarding assets, liabilities, capital and major funding sources;
- (iv) A description of derivative activities and hedging activities;
- (v) A list of memberships in material payment, clearing and settlement systems;
- (vi) A description of foreign operations;
- (vii) The identities of material supervisory authorities;
- (viii) The identities of the principal officers;
- (ix) A description of the corporate governance structure and processes related to resolution planning;
- (x) A description of material management information systems; and
- (xi) A description, at a high level, of the CIDI's resolution strategy, covering such items as the range of potential purchasers of the CIDI, its material entities and core business lines.

(2) The confidentiality of resolution plans shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the FDIC's Disclosure of Information Rules (12 CFR part 309).

(3) Any CIDI submitting a resolution plan or related materials pursuant to this section that desires confidential treatment of the information submitted pursuant to 5 U.S.C. 552(b)(4) and the FDIC's Disclosure of Information Rules (12 CFR part 309) and related policies may file a request for confidential treatment in accordance with those rules.

(4) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(5) To the extent permitted by law, the submission of any nonpublicly available data or information under this section shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the FDI Act, 12 U.S.C. 1828(x).

Dated at Washington, D.C., this 17<sup>th</sup> day of January, 2012

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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Robert E. Feldman,  
Executive Secretary

**079607**

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